

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

FEBRUARY 1996 SESSION

**FILED**  
March 14, 1996  
Cecil W. Crowson  
Appellate Court Clerk

**STATE OF TENNESSEE,**

Appellee,

V.

**CARRIE PHIPPS,**

Appellant.

)  
) C.C.A. No. 01C01-9506-CC-00199  
)  
) Coffee County  
)  
) Hon. Gerald L. Ewell, Judge  
)  
) (Retaliation for Past Action, Assault)  
)  
)

FOR THE APPELLANT:

Robert S. Peters  
100 First Avenue, S.W.  
Winchester, TN 37398

FOR THE APPELLEE:

Charles W. Burson  
Attorney General & Reporter

Charlotte H. Rappuhn  
Assistant Attorney General  
Criminal Justice Division  
450 James Robertson Parkway  
Nashville, TN 37243-0493

C. Michael Layne  
District Attorney General

Stephen E. Weitzman  
Asst. Dist. Attorney General  
P.O. Box 147  
Manchester, TN 37355

OPINION FILED: \_\_\_\_\_

**AFFIRMED**

**PAUL G. SUMMERS,**  
Judge

## OPINION

The appellant, Carrie Phipps, was convicted following a jury trial of both retaliation for past action and assault. In this appeal, she claims that the evidence was insufficient to support either conviction. Following our review, we affirm the convictions.

The testimony at trial revealed that the victim, Lisa Swoape, the former girlfriend of the appellant's brother, Jimmy Phipps, was subpoenaed by the state to testify as the prosecuting witness in its case against Jimmy Phipps. On the date of the preliminary hearing, Swoape and other witnesses appeared as directed; however, Phipps waived the hearing. The judge instructed the witnesses not to discuss the case and, recognizing the tension between the parties, admonished the Phipps family not to bother the witnesses.

Because Swoape feared the Phippses, she asked Manchester Police Officer Dennis May to escort her to the parking lot. As Swoape and Officer May exited the building, they saw the appellant who watched as Swoape got into her car. The appellant told May that "[he] would have to protect the witnesses" and began to yell in Swoape's direction. May described the appellant as belligerent. After Swoape had driven away, the appellant ran to her vehicle and proceeded toward the four-lane highway behind Swoape. Officer May followed them in his patrol car because he knew that the appellant was going after Swoape.

Officer May watched as the appellant, traveling at a high rate of speed, passed several vehicles to catch up with Swoape. Driving alongside Swoape, the appellant pointed and yelled at her, motioning for her to pull over. May and other witnesses saw the appellant swerve toward Swoape's vehicle on two or three occasions.

Swoape was finally forced off the highway into a parking lot. She testified that she pulled over because she was afraid the appellant was going to cause her to wreck. The appellant hurriedly exited her vehicle and raced toward Swoape's vehicle. Swoape said that she was frightened and began to cry. Swoape and her passenger, a 14-year-old neighbor, both said that the appellant approached the vehicle cursing and saying, "You god d \_\_\_ bitch. I'm going to whip your f \_\_\_ing a \_\_\_ for what you did to my brother." Swoape added that the appellant was swinging her arms wildly. She said she was afraid and feared bodily injury because the appellant was "just going crazy."

Officer May arrived seconds later to witness the confrontation but did not hear the appellant make specific threats. May told the appellant to calm down or he would take her to jail to which she replied, "F\_\_\_ you. Put me in jail." May partially obliged her request. He testified that the appellant was obstreperous as he arrested her and placed her in the backseat of the patrol car.

Charlie West and his daughter Melissa, who was also to have been a witness at Jimmy Phipps' preliminary hearing, were driving on the same stretch of highway and witnessed the events. They corroborated Officer May's testimony. The Wests did not hear the appellant make a specific threat toward Swoape.

The appellant argues that the evidence was insufficient to support either conviction. In a sufficiency of the evidence challenge, the relevant question on appellate review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime or crimes beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979); State v. Duncan, 698 S.W.2d 63 (Tenn. 1985); T.R.A.P. 13(e).

In Tennessee, great weight is given to the result reached by the jury in a criminal trial. A jury verdict accredits the testimony of the state's witnesses and resolves all conflicts in favor of the state. State v. Williams, 657 S.W.2d 405 (Tenn. 1983). Moreover, a guilty verdict replaces the presumption of innocence enjoyed at trial with the presumption of guilt on appeal. State v. Grace, 493 S.W.2d 474 (Tenn. 1973). The appellant has the burden of overcoming the presumption of guilt. Id. On appeal, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832 (Tenn. 1978).

The appellant first claims that the evidence was insufficient to support her conviction for retaliation for past action. Tenn. Code Ann. § 39-16-510 provides that:

A person commits the offense of retaliation for past action who harms or threatens to harm a witness at an official proceeding ... by any unlawful act in retaliation for anything the witness ... did in an official capacity as witness....

Tenn. Code Ann. § 39-16-510 (1991). The appellant argues that because Swoape, though subpoenaed, did not testify at the preliminary hearing, she was not a "witness," within the meaning of this section. We disagree.

This court previously addressed a similar issue in State v. Manning, 909 S.W.2d 11 (Tenn. Crim. App. 1995). In Manning, the appellant made phone calls from the jail to his wife in which he threatened to kill her and members of her family. Id. at 12. The appellant's wife then signed an affidavit of complaint before a general sessions judge which resulted in a harassment warrant being issued against the appellant. Id. Appellant was found guilty and sentenced to thirty days additional incarceration. As a result of this conviction, the judge issued a probation violation warrant against the appellant. Id. After receiving the warrant in jail, the appellant left a series of messages to his wife on the answering machine threatening to "take care of her" when he got out of jail and

saying he "didn't care if he got twenty years for doing it." Id. The appellant was charged with retaliation for past action and testified in his own behalf. He insisted that his threatening phone calls resulted from his probation being violated and not the harassment warrant. However, we held that the "official action" for which the appellant retaliated was the victim's signing of the affidavit of complaint in the harassment charge. Id.

Swoape was the affiant on Jimmy Phipps' arrest warrant. As in Manning, Swoape then became a "witness" for the state and retained that status pending proper disposition of the case against Jimmy Phipps. It is of no consequence that she did not testify at the preliminary hearing. We conclude that Swoape was a witness within the meaning of Tenn. Code Ann. § 39-16-510.

We also find that the evidence was sufficient for the jury to conclude that the appellant's actions were in retaliation for past action. After forcing Swoape's vehicle off the road, the appellant confronted Swoape saying that she was going to "kick her ... a \_ \_" for what she had done to her brother, i.e., swear out a warrant against Jimmy Phipps. These actions immediately followed Swoape's departure from the courthouse where she had been called to testify in Jimmy Phipps' preliminary hearing. This issue is without merit.

The appellant also challenges the sufficiency of the evidence as to the assault conviction. "A person commits assault who ... [i]ntentionally or knowingly causes another to reasonably fear imminent bodily injury." Tenn. Code Ann. § 39-13-101(a)(2) (1991). Swoape testified that when the appellant forced her off the highway she was afraid. She indicated that she feared bodily injury when the appellant approached her car and threatened her. The appellant testified in her own behalf and insisted that she was not hostile when confronting Swoape. She denied that she had swerved toward Swoape's vehicle. Instead, she maintains that she was simply motioning for Swoape to pull over so that she

could get some things off her chest. The appellant admitted that she called Swoape a liar and uttered a few curse words but insists she never intended to harm her. The appellant also denied that she told Swoape she was going to "whip her."

We find that sufficient evidence exists to establish the elements of assault. Once armed with such evidence, the jury was entrusted exclusively as the triers of fact to evaluate the weight and credibility of the witnesses' testimony. State v. Sheffield, 676 S.W.2d 542 (Tenn. 1984); Byrge v. State, 575 S.W.2d 292 (Tenn. Crim. App. 1978). Here, they gave the greater weight to the state's witnesses. We will not usurp that role.

The judgment of the trial court is, in all respects, affirmed.

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PAUL G. SUMMERS, Judge

CONCUR:

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JOSEPH M. TIPTON, Judge

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DAVID H. WELLES, Judge